

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 200

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO PUBLIC UTILITIES; REQUIRING PUBLIC UTILITIES AND
RURAL ELECTRIC COOPERATIVES TO MAKE NET METERING SERVICES
AVAILABLE TO CUSTOMERS THAT OPERATE FACILITIES THAT PRODUCE
ELECTRICAL ENERGY FROM RENEWABLE ENERGY RESOURCES; PROVIDING
REQUIREMENTS FOR CHARGES AND CREDITS FOR NET METERING;
PROVIDING REQUIREMENTS FOR SAFETY AND PERFORMANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-3-3 NMSA 1978 (being Laws 1967,
Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when
used in the Public Utility Act:

A. "affiliated interest" means a person who
directly or indirectly, through one or more intermediaries,
controls or is controlled by or is under common control with a

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underscored material = new
[bracketed material] = delete

1 public utility. Control includes instances where a person is
2 an officer, director, partner, trustee or person of similar
3 status or function or owns directly or indirectly or has a
4 beneficial interest in ten percent or more of any class of
5 securities of a person;

6 B. "average operating margin" means the average of
7 the operating margins of a rural electric cooperative over the
8 past five years;

9 C. "clean generation source" means a facility that
10 produces electrical energy:

11 (1) generated by the use of low- or zero-
12 emissions generation technology with substantial long-term
13 production potential;

14 (2) generated by the use of a renewable energy
15 resource that may include a solar, wind, hydropower or
16 geothermal resource or by the use of a biomass resource such as
17 agriculture or animal waste, small diameter timber, salt cedar
18 and other phreatophyte or woody vegetation removed from a river
19 basin or watershed in New Mexico, landfill gas and
20 anaerobically digested waste biomass or hydrogen produced from
21 renewable sources used in fuel cells; and

22 (3) that is not generated by use of fossil
23 fuel or nuclear energy;

24 ~~[B.]~~ D. "commission" means the public regulation
25 commission;

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1 ~~[E-]~~ E. "commissioner" means a member of the
2 commission;

3 F. "customer-generator" means a retail customer of
4 a public utility or rural electric cooperative who is also the
5 operator of a clean generation source;

6 ~~[D-]~~ G. "municipality" means a municipal
7 corporation organized under the laws of the state, and H-class
8 counties;

9 H. "net metering" means measurement of the
10 difference between the electricity supplied to a customer-
11 generator by a public utility or rural electric cooperative and
12 the electricity that is generated by the customer-generator and
13 delivered to a public utility or rural electric cooperative at
14 the same point of interconnection during a billing period;

15 I. "net metering revenue reduction" means the
16 difference between the rural electric cooperative's applicable
17 tariff energy charge and the cooperative's avoided cost as
18 filed with the commission, multiplied by the production values
19 determined by the commission for a net metering clean energy
20 source;

21 J. "operating margin" means the amounts received or
22 receivable from the furnishing of electric service by a rural
23 electric cooperative in excess of costs incurred in the
24 furnishing of that service;

25 K. "peak generating capacity" means the total

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1 maximum rated output, in kilowatts, of a clean generation
2 source;

3 ~~[E.]~~ L. "person" means an individual, firm,
4 partnership, company, rural electric cooperative organized
5 under Laws 1937, Chapter 100 or the Rural Electric Cooperative
6 Act, corporation or lessee, trustee or receiver appointed by
7 any court. "Person" does not mean a class A county as
8 described in Section 4-36-10 NMSA 1978 or a class B county as
9 described in Section 4-36-8 NMSA 1978. "Person" does not mean
10 a municipality as defined in this section unless the
11 municipality has elected to come within the terms of the Public
12 Utility Act as provided in Section 62-6-5 NMSA 1978. In the
13 absence of voluntary election by a municipality to come within
14 the provisions of the Public Utility Act, the municipality
15 shall be expressly excluded from the operation of that act and
16 from the operation of all its provisions, and no such
17 municipality shall for any purpose be considered a public
18 utility;

19 M. "rural electric cooperative" means a rural
20 electric cooperative organized pursuant to the Rural Electric
21 Cooperative Act;

22 ~~[F.]~~ N. "securities" means stock, stock
23 certificates, bonds, notes, debentures, mortgages or deeds of
24 trust or other evidences of indebtedness issued, executed or
25 assumed by a utility;

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1 ~~[G-]~~ 0. "public utility" or "utility" means every
2 person not engaged solely in interstate business and, except as
3 stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,
4 operate, lease or control:

5 (1) any plant, property or facility for the
6 generation, transmission or distribution, sale or furnishing to
7 or for the public of electricity for light, heat or power or
8 other uses;

9 (2) any plant, property or facility for the
10 manufacture, storage, distribution, sale or furnishing to or
11 for the public of natural or manufactured gas or mixed or
12 liquefied petroleum gas for light, heat or power or other uses;
13 but the term "public utility" or "utility" shall not include
14 any plant, property or facility used for or in connection with
15 the business of the manufacture, storage, distribution, sale or
16 furnishing of liquefied petroleum gas in enclosed containers or
17 tank truck for use by others than consumers who receive their
18 supply through any pipeline system operating under municipal
19 authority or franchise and distributing to the public;

20 (3) any plant, property or facility for the
21 supplying, storage, distribution or furnishing to or for the
22 public of water for manufacturing, municipal, domestic or other
23 uses; provided, however, nothing contained in this paragraph
24 shall be construed to apply to irrigation systems, the chief or
25 principal business of which is to supply water for the purpose

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1 of irrigation;

2 (4) any plant, property or facility for the
3 production, transmission, conveyance, delivery or furnishing to
4 or for the public of steam for heat or power or other uses; or

5 (5) any plant, property or facility for the
6 supplying and furnishing to or for the public of sanitary
7 sewers for transmission and disposal of sewage produced by
8 manufacturing, municipal, domestic or other uses; provided that
9 the terms "public utility" or "utility" as used in the Public
10 Utility Act do not include any utility owned or operated by a
11 class A county as described in Section 4-36-10 NMSA 1978 either
12 directly or through a corporation owned by or under contract
13 with such a county;

14 [~~H.~~] P. "rate" means every rate, tariff, charge or
15 other compensation for utility service rendered or to be
16 rendered by a utility and every rule, regulation, practice,
17 act, requirement or privilege in any way relating to such rate,
18 tariff, charge or other compensation and any schedule or tariff
19 or part of a schedule or tariff thereof;

20 [~~F.~~] Q. "renewable energy" means electrical energy
21 generated by means of a low- or zero-emission generation
22 technology that has substantial long-term production potential
23 and may include, without limitation, solar, wind, hydropower,
24 geothermal, landfill gas, anaerobically digested waste biomass
25 or fuel cells that are not fossil fueled. "Renewable energy"

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1 does not include fossil fuel or nuclear energy;

2 ~~[J-]~~ R. "service" or "service regulation" means
3 every rule, regulation, practice, act or requirement relating
4 to the service or facility of a utility;

5 ~~[K-]~~ S. "Class I transaction" means the sale, lease
6 or provision of real property, water rights or other goods or
7 services by an affiliated interest to a public utility with
8 which it is affiliated or by a public utility to its affiliated
9 interest;

10 ~~[L-]~~ T. "Class II transaction" means:

11 (1) the formation after May 19, 1982 of a
12 corporate subsidiary by a public utility or a public utility
13 holding company by a public utility or its affiliated interest;

14 (2) the direct acquisition of the voting
15 securities or other direct ownership interests of a person by a
16 public utility if such acquisition would make the utility the
17 owner of ten percent or more of the voting securities or other
18 direct ownership interests of that person;

19 (3) the agreement by a public utility to
20 purchase securities or other ownership interest of a person
21 other than a nonprofit corporation, contribute additional
22 equity to, acquire additional equity interest in or pay or
23 guarantee any bonds, notes, debentures, deeds of trust or other
24 evidence of indebtedness of any such person; provided, however,
25 that a public utility may honor all agreements entered into by

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1 such utility prior to May 19, 1982; or

2 (4) the divestiture by a public utility of any
3 affiliated interest that is a corporate subsidiary of the
4 public utility;

5 [~~M.~~] U. "corporate subsidiary" means any person ten
6 percent or more of whose voting securities or other ownership
7 interests are directly owned by a public utility; and

8 [~~N.~~] V. "public utility holding company" means an
9 affiliated interest that controls a public utility through the
10 direct or indirect ownership of voting securities of that
11 public utility."

12 Section 2. A new section of the Public Utility Act is
13 enacted to read:

14 "[NEW MATERIAL] NET METERING SERVICE.--

15 A. If a public utility or a rural electric
16 cooperative makes net metering services available to a
17 customer-generator with a clean generation source that the
18 public utility serves, the customer-generator shall pay all
19 costs for the acquisition and installation of the necessary
20 metering equipment. The customer-generator shall also pay all
21 costs incurred by the public utility for net metering,
22 including costs for equipment or services that are necessary to
23 meet safety and performance standards pursuant to the Public
24 Utility Act.

25 B. A public utility or a rural electric cooperative

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1 may install additional equipment that it deems necessary to
2 meter the total electricity flow in each direction. If the
3 clean generation source of the customer-generator has a peak
4 generating capacity of ten kilowatts or less, a party
5 requesting the additional equipment shall pay the cost of
6 additional equipment. If the clean generation source of the
7 customer-generator has a peak generating capacity exceeding ten
8 kilowatts, the public utility or rural electric cooperative may
9 require the customer-generator to pay the cost of the
10 additional equipment.

11 C. Costs imposed by a public utility or a rural
12 electric cooperative on a customer-generator shall not exceed
13 those necessary to meet safety and interconnection requirements
14 pursuant to the Public Utility Act.

15 D. A customer-generator is responsible for costs
16 associated with operating and maintaining a clean generation
17 source of the customer-generator and for costs related to
18 modification of the clean generation source required for the
19 purposes of interconnectivity, safety and reliability.

20 E. A public utility shall make net metering
21 available to a customer-generator with a clean generation
22 source with peak generating capacity of ten kilowatts or less
23 that meets the safety and interconnection requirements pursuant
24 to the Public Utility Act.

25 F. A public utility that is not a rural electric

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1 cooperative shall make net metering available to a customer-
2 generator with a clean generation source that meets the safety
3 and interconnection requirements pursuant to the Public Utility
4 Act and that has a peak generating capacity exceeding ten
5 kilowatts, but not exceeding one hundred kilowatts; provided
6 that making net metering available to that customer-generator
7 does not increase the cumulative peak generating capacity of
8 all clean generation sources on a public utility's distribution
9 system above one percent of the average of that public
10 utility's peak retail demand over the past three calendar
11 years.

12 G. A rural electric cooperative shall make net
13 metering available to a customer-generator with a clean
14 generation source that meets the safety and interconnection
15 requirements pursuant to the Public Utility Act and that has a
16 peak generating capacity exceeding ten kilowatts, but not
17 exceeding one hundred kilowatts; provided that making net
18 metering available to that customer-generator does not increase
19 the net metering revenue reduction above one percent of the
20 rural electric cooperative's average operating margins.

21 H. A public utility or rural electric cooperative
22 may allow additional net metering of customer-generators beyond
23 the limits imposed by Subsections F and G of this section.

24 I. Once interconnected, net metering shall not be
25 withdrawn from a customer-generator on the basis of the

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1 limitations specified in Subsections E and F of this section.

2 J. The commission shall adopt rules for this 2005
3 act that shall become effective on January 1, 2006, including
4 uniform interconnection and safety standards consistent with
5 the requirements of Subsection C of this section and the safety
6 and performance standards of the Public Utility Act that
7 include application procedures, reporting requirements for peak
8 loads and net margins and provisions ensuring compliance and
9 timely response by utilities to customer requests for
10 interconnection."

11 Section 3. A new section of the Public Utility Act is
12 enacted to read:

13 "[NEW MATERIAL] RATES AND CHARGES--CREDITS.--

14 A. A rate of charge for retail electric service by
15 a public utility or rural electric cooperative to a
16 customer-generator shall be based on the rate or charge of the
17 public utility or rural electric cooperative that is applicable
18 to the customer-generator's customer class.

19 B. A public utility or rural electric cooperative
20 shall provide a credit to a customer-generator equal to or
21 greater than the applicable tariff of the public utility or
22 rural electric cooperative for the customer-generator's
23 customer class with respect to the customer-generator's
24 production of electricity.

25 C. If a customer-generator's net aggregate bill

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1 from the public utility or rural electric cooperative is less
2 than zero, a credit shall be carried over to future bills of
3 that customer-generator until the credit balance equals zero.

4 D. A customer-generator shall not claim a credit
5 pursuant to this section from a public utility or rural
6 electric cooperative with respect to a clean generation source
7 pursuant to the Public Utility Act if the customer-generator
8 has claimed a credit from another public utility or rural
9 electric cooperative for the same clean generation source."

10 Section 4. A new section of the Public Utility Act is
11 enacted to read:

12 "[NEW MATERIAL] SAFETY AND PERFORMANCE REQUIREMENTS.--

13 A. A net metering system used by a customer-
14 generator shall comply with federal, state and local safety and
15 performance standards and codes.

16 B. Interconnection requirements for clean
17 generation sources approved by the commission shall comply with
18 the standards of the institute of electrical and electronics
19 engineers for interconnecting distributed resources with
20 electric power systems.

21 C. A public utility or rural electric cooperative
22 may require a customer-generator, at that customer-generator's
23 expense, to provide lockable switching equipment capable of
24 isolating a clean generation source from the public utility's
25 system.

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1 D. The public utility or rural electric cooperative
2 shall not be liable directly or indirectly for permitting or
3 continuing to allow an attachment of a clean generation source
4 or for an act or omission of a customer-generator that causes
5 loss or injury to a person or property, including death of a
6 customer-generator or a third party. A customer-generator
7 shall indemnify a public utility for damage to a person or
8 property and for any damage or loss incurred by a third party
9 or an heir or successor of that party as the result of the
10 installation or operation of a clean generation source.

11 E. A customer-generator shall notify its public
12 utility or rural electric cooperative and the commission of the
13 intent to install a clean generation source at least sixty days
14 before its installation on an application form prescribed by
15 the commission. The public utility shall approve or disapprove
16 the application and notify the customer-generator and the
17 commission of its approval or disapproval within thirty days of
18 the public utility's receipt of the application."